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Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 17, 2008

TO: Persons on the attached mailing list.

RE: Wise Service Company – Water
TPDES Permit No. WQ0014708001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the John A. and Katherine G. Jackson Public Library, 1700 South Farm-to-Market Road 51, Decatur, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

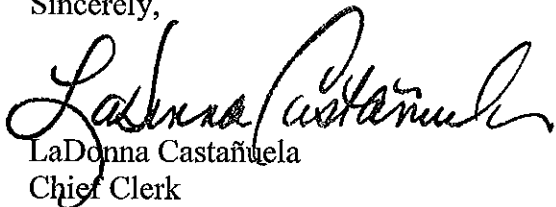
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/mr

Enclosures

MAILING LIST
for
Wise Service Company – Water
TPDES Permit No. WQ0014708001

FOR THE APPLICANT:

Rayce Cantwell
Wise Service Company
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Decatur, Texas 76234

Glenn Breisch, P.E.
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PROTESTANTS/INTERESTED PERSONS:

See attached list.

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FOR OFFICE OF PUBLIC ASSISTANCE:

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FOR THE CHIEF CLERK:

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920 COUNTY ROAD 2175
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PROPOSED PERMIT NO. WQ0014708001

JAN 15 PM 1:42

APPLICATION BY
WISE SERVICE COMPANY-
WATER

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§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Wise Service Company – Water's (Applicant) application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters or comments at the public meeting from the following persons: Lou Bridges, President of the Wise County Water Control and Improvement District No. 1, Nancy Carnahan, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Cody Gillespie, Ann Jolley, Thomas Long, Gordon and Roxie Ploeger, Catherine Russell, Kevin Smith, Deborah White, Jana Woodruff, Joylyn Woodruff and Martin Woodruff. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Facility Description

The Applicant has applied for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The wastewater treatment plant would serve the Canyon Springs Subdivision. The Canyon Springs Wastewater Treatment Facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units would include bar screens, an aeration basin, a clarifier, a sludge digester and a chlorine contact chamber. The facility has not been constructed.

The plant site would be located approximately 3.75 miles north northwest of the intersection of U.S. Highway 380 and Farm-to-Market Road 730 and approximately 1.4 miles east of the intersection of U.S. Highway 287 and County Road 2175 in Wise County, Texas. Treated effluent would be discharged via pipeline to an unnamed tributary; then to an unnamed reservoir; then to an unnamed tributary; then to Watson Branch; then to Sandy Branch; then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed

tributary and high aquatic life use for the unnamed reservoir. The designated uses for Segment No. 0810 are high aquatic life use, public water supply, and contact recreation.

Procedural Background

The application for a new permit was received on April 20, 2006 and declared administratively complete on July 20, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 10, 2006 in the *Wise County Messenger*. The TCEQ Executive Director completed the technical review of the application on August 21, 2006, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 8, 2006 in the *Wise County Messenger*. The Notice of Public Meeting was published on March 15, 2007 in the *Wise County Messenger* and a public meeting was held on April 3, 2007 in Decatur, Texas. The public comment period ended on April 3, 2007. Since this application was administratively complete on or after September 1, 1999, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Lou Bridges, President of the Wise County Water Control and Improvement District No. 1, Cody Gillespie and Ann Jolley comment that the discharge from the proposed facility into the reservoir would adversely affect the water quality, fish and wildlife habitat, and other environmental features. Lou Bridges and Cody Gillespie also comment that they are concerned about the location and long range effect the proposed facility would have on the area. Nancy Carnahan, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Gordon and Roxie Ploeger, Catherine Russell, Jana Woodruff and Joylyn Woodruff comment that such a large quantity and unanticipated discharge will have a negative impact on the lake, affect recreational uses and the wildlife, as well as cattle that graze the property. Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Ann Jolley, Thomas Long, Kevin Smith, Deborah White and Jana Woodruff comment that the lake was designed to provide a sanctuary for wildlife and the island was created to provide a safe haven for migratory birds. Catherine Russell comments that she wants her grandchildren to be able to enjoy recreational activities without the fear of contamination from human wastewater. Deborah White is concerned that the wildlife's water supply will be affected. Jana Woodruff comments that the discharge will have a negative impact on the environmental and ecological health of the area. Jana Woodruff comments that she is concerned about the effluent and levels of contamination. Althea Forbis comments that fish may not be able to lay their eggs in treated water and is concerned about the effect it will have on the waterfowl. Joylyn Woodruff comments that she is concerned about the protection of the environment. Rob Fothergill inquires who will guarantee that their water will be safe enough to drink. Gordon and Roxie Ploeger comment that they enjoy their quality of life as it stands today. Catherine Russell is concerned that the project will affect her way of life. Kevin Smith also comments that the proposed facility will reduce the quality of their life. Althea Forbis

comments that their land is enhanced by the lake and condones having a wastewater treatment facility managing the lake. Cathy Russell Fothergill comments that she is concerned that the developer's desire to sell lots does not warrant the damage that the project will have to their land, water, and environment. Gordon and Roxie Ploeger comment that they are concerned about the increase of activities related to the construction of the facility, its operation and removal of sludge for the years to come. Althea Forbis comments that the proposed type of system has not been proven to be safe and capable of providing clean wastewater that will not harm wildlife. Richard Fothergill comments that no one can guarantee the safety of the treated sewage water from the proposed development. Deborah White comments that the quality of water to be discharged has not been fully explained. Cathy Russell Fothergill and Richard Fothergill comment that the construction and completion of the proposed facility would prevent wildlife from Lyndon B. Johnson Grasslands to find their way to the lake and land. Rob Fothergill and Kevin Smith comment that the proposed development would displace many species of wildlife that exist on the surrounding land. Cathy Russell Fothergill comments that the Lyndon B. Johnson Grasslands will be affected by the proposed wastewater treatment facility by making outdoor activities unpleasant and unsafe. Cathy Russell Fothergill comments that the grasslands attract thousands of people who use the area for outdoor recreation. Rob Fothergill and Kevin Smith comment that they are concerned that the proposed facility would deface the southern portion of the grasslands and make it unattractive to visitors. Ann Jolley comments that the proposed facility will be located on former Caddo-LBJ Grassland. Ann Jolley comments that it does not make sense to destroy an area that has been in place since 1999. Joylyn Woodruff comments that the disposal site adjoins the protected grasslands and strongly opposes the effects the project will have on this land. Cathy Russell Fothergill comments that her family has been raising beef cattle on their farm and is concerned that the wastewater treatment facility is going to contaminate the water that has been watering her farm. Rob Fothergill comments that his family uses land adjacent to the proposed facility site to operate a farm for beef cattle production. Rob Fothergill and Kevin Smith comment that they are concerned that overflow from the lake could spill onto pastureland used for grazing cattle and contain tainted water. Jana Woodruff comments that the reservoir was built to protect farm and grazing pastures in the area.

RESPONSE 1:

The draft permit was developed to protect aquatic life and human health in accordance with Texas Surface Water Quality Standards and was established to be protective of human health and the environment provided the Applicant operates and maintains the facility according to TCEQ rules and the requirements in the draft permit. The Executive Director has determined that this draft permit would be protective of the environment, water quality, aquatic and terrestrial life, and human health. The draft permit includes effluent limitations and monitoring requirements designed to ensure the treated effluent meets Texas Surface Water Quality Standards for the protection of surface water and human health according to TCEQ rules and policies.

The effluent limits in the draft permit are set to maintain and protect existing instream uses. As part of the application process, the Executive Director must determine the uses of the receiving water and set effluent limits that are protective of those uses, including aquatic life and contact recreation. The unclassified receiving water uses for the unnamed tributary are no significant aquatic life use. The unclassified receiving water uses for the reservoir are high aquatic life use. The designated uses for Segment No. 0810 are high aquatic life use, public water supply, and contact recreation. In order to determine whether the action to be authorized by the draft permit would affect existing uses related to aquatic life and contact recreation, antidegradation reviews were performed. The antidegradation reviews preliminarily determined that existing water quality uses would not be impaired by this permit action—existing uses would be maintained and protected if the facility is operated and maintained as required by the proposed permit and applicable regulations. These determinations may be reexamined if new information is received.

Most common water quality issues affecting livestock production are excessive salinity (high concentration of minerals), high nitrogen content, bacterial contamination, and heavy growths of blue-green algae. Salinity levels typically have to be in excess of 5,000 mg/L total soluble salts before affecting cattle. These salinity levels are in excess of what would be acceptable for drinking water in a household, which is less than 1,000 mg/L. Since this facility is not proposing to accept waste streams from facilities which may be concentrating salts, it is expected that the salinity of the wastewater would only marginally increase from the salinity of the receiving stream. The facility is proposing to chlorinate the discharge to address bacterial contamination issues. Heavy growths of algae have been addressed by adding a phosphorous limit to the permit. The lake is not a designated drinking water supply, and all surface waters should receive treatment (at a minimum chlorination) before entering a home for consumption. Accordingly, the wastewater treatment facility would not be required to meet drinking water standards.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. The application for this facility was reviewed to determine whether the discharge could potentially have an adverse effect on an aquatic or aquatic-dependent federally endangered or threatened species, including proposed species. TCEQ staff followed the screening process for aquatic or aquatic-dependent federally endangered and threatened species contained in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (January 2003).

The draft permit requires that the facility be designed to produce an effluent quality in compliance with the permit parameters required in the draft permit. The effluent limits in the draft permit, based on a 30-day average, are 5 milligrams per liter (mg/L) 5-day carbonaceous biochemical oxygen demand, 5 mg/L total suspended solids, 2 mg/L ammonia-nitrogen, 1 mg/l total phosphorus and 4.0 mg/L minimum dissolved oxygen. The effluent must contain a chlorine residual of at least 1.0 mg/L and may not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes based on peak flow. The effluent limits for 5-day carbonaceous biochemical oxygen demand, total suspended solids, ammonia-nitrogen, and phosphorus are

some of the more stringent effluent limits currently used. The plant would be designed as an activated sludge facility operating in the extended aeration mode. If requested by the Wastewater Permitting Section, the permittee must submit plans, specifications and a final engineering design report. The permittee must clearly show how the treatment system will meet the permitted effluent limitations required by the permit.

The Applicant is required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. The Applicant is also required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. Additionally, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

TCEQ staff evaluated the potential impacts on water quality associated with the proposed wastewater discharge. The treated effluent from the wastewater treatment facility would be discharged via pipeline to an unnamed tributary, then to a reservoir, then to an unnamed tributary, then to Watson Branch, then to Sandy Branch and then to West Fork Trinity River Below Bridgeport Reservoir. Because treated effluent from the facility would be flowing away from the Lyndon B. Johnson Grasslands, the discharge itself is not likely to have a direct impact on the grasslands. Typically, the Executive Director does not consider land use concerns such as such as the movement of wildlife from the grasslands to other property or visual appeal to grasslands visitors during the permitting process.

It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. The permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations.

COMMENT 2:

Lou Bridges, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Cody Gillespie, Ann Jolley, Thomas Long, Catherine Russell, Kevin Smith, Deborah White and Jana Woodruff comment that they are concerned that the application submitted by the Applicant identifies Site #35 as an unnamed reservoir and provided incorrect information to TCEQ. Nancy Carnahan also comments that she is concerned that the applicant made material misrepresentations and omissions in the application, such as failure to correctly identify the reservoir. Thomas Long also comments that the applicant failed to revise or correct the data in the application after they were informed of the lake's existence.

RESPONSE 2:

Based on information provided by individuals at the public meeting held on April 3, 2007 in Decatur, Texas, the Executive Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site No. 35 (hereinafter "the reservoir"). However, this naming of the reservoir did not affect the staff's analysis of the impact of the wastewater on the reservoir, as it was identified by TCEQ staff and considered in the development of the draft permit.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

COMMENT 3:

Lou Bridges is concerned about the possibility of plant failure. Nancy Carnahan comments that insufficient safeguards have been put into place for this proposed permit. She further comments that the permit should not allow self-monitoring data and should be denied until the permit includes weekly testing by a TCEQ representative, an automatic system shut down and prevention of discharge in the event of any failure. Thomas Long express concern that the Applicant would be subject to a system that depends on self-reporting data to meet compliance. She also feels that the proposed facility should provide an alarm to trigger such an event, conduct computer and/or satellite monitoring and a water quality testing report. In the event of machinery or equipment breakdown, both she and Althea Forbis feel that the plant will not be capable to hold several days of sewer water without discharging effluent that does not meet TCEQ standards. Althea Forbis also expresses concern that once something goes wrong with the plant, it will be difficult to fix. She also feels that the smallest human error in the operation of the facility could cause severe consequences on the environment. Jana Woodruff comments that she is aware of the errors, mistakes and breakdowns associated with this project. Martin Woodruff asks if TCEQ can require a maximum level of backup equipment to ensure an operation free of errors.

RESPONSE 3:

The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility. The proposed draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. Other Requirement No. 8 on page 23 of the proposed draft permit requires the Applicant to clearly show how the treatment system will meet the final permitted effluent limitations required for each phase of the proposed draft permit. The proposed draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC § 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer.

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit requires that the Applicant must at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Under the draft permit, the Applicant would be responsible for installing adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30. This facility must be operated by a chief operator holding a Category C

license or higher. The facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. The Executive Director must consider the quality of the discharge and its effect on the quality of the receiving waters, but the Executive Director cannot require an Applicant to use independent entities to provide monitoring services.

The Applicant is required to monitor and sample the treated effluent prior to discharge and provide monthly reports to TCEQ that include the results. All samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. For this application, the draft permit requires the Applicant to sample the discharge flow five times per week, carbonaceous biochemical oxygen demand once per week, total suspended solids once per week, ammonia nitrogen once per week, chlorine residual five times per week, phosphorous once per week, and dissolved oxygen once per week. The Applicant is required to notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. TCEQ regional staff may also sample the effluent during routine inspections or in response to a complaint.

The Executive Director is authorized by statute to initiate an enforcement action based on information provided by a private individual (Tex. Water Code §7.0025; 30 Tex. Admin. Code §70.4). Agency protocols, procedures, and guidelines must be used when collecting and submitting information or evidence to ensure that the information or evidence is scientifically reliable and legally defensible. Protocols vary depending on the nature of the problem, for example, water quality sampling procedures are very different from nuisance odor evaluation. If a protocol has specific training requirements, training must be completed before submitting information based on it. If information is gathered in the form of physical sampling data, the analysis of that data must be completed by a laboratory that follows established protocols to produce scientifically reliable information. You may contact the TCEQ at 1-888-777-3186 to receive a list of laboratories or if you have questions about sampling protocols and procedures.

The Applicant is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act, the Texas Water Code, Chapters 26, 27, and 28, and Texas Health and Safety Code, Chapter 361. These violations include knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. The Applicant would be subject to potential enforcement action for failure to comply with TCEQ rules or the permit, including unauthorized discharges. TCEQ regional staff

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investigates complaints and the agency takes appropriate enforcement action if the investigator documents a violation. Anyone may contact TCEQ at 1-888-777-3186 or by e-mail at cmplaint@TCEQ.state.tx.us to report a potential violation of the Applicant's permit or regulations. Citizens may also gather data to show that a permittee is not in compliance with TCEQ rules. For more information on citizen collected evidence, please see:

www.TCEQ.state.tx.us/enforcement/complaints.html.

COMMENT 4:

Nancy Carnahan objects to the Applicant's failure to provide timely and personal written notice to all directly affected adjacent property holders. Nancy Carnahan also comments that she did not receive direct notice from the Applicant or TCEQ regarding the application, even though she is on the taxing authority's mailing list for her property. Cathy Russell Fothergill and Richard Fothergill and also comment that the applicant failed to identify adjacent landowners that would be impacted by the proposed facility. Cathy Fothergill further states that the landowner map and the list of landowners is difficult to decipher and feels it is incorrect. Rob Fothergill and Ann Jolley comment that several others were not properly notified from TCEQ or included on the adjacent landowners list. Thomas Long and Kevin Smith comment that their families did not receive notification of the proposed permit. Thomas Long also noted that the J.E. Forbis Trust and his heirs were not notified and are significantly affected. Catherine Russell comments that legal ownership of tracts adjacent to the proposed facility were not identified. Deborah White comments that she and other landowners affected by the project did not receive the first notice, but did receive the second notice. Deborah White asks why they were not informed of the project until the second notice. Jana Woodruff comments that adjacent landowners were not notified when the application was requested. Althea Forbis comments that the notice for the application was inadequate. Cathy Russell Fothergill and Richard Fothergill, and Catherine Russell comment that the notice published in August 2006, does not mention the lake. Ann Jolley comments that descriptions provided in the notices were misleading and incorrect. She further states that the NORI did not mention the lake known as "Big Sandy Creek Watershed Project Site #35" and that the NAPD incorrectly referred to the lake as an unnamed reservoir. Thomas Long also comments that the NORI did not mention the unnamed reservoir or a lake of any kind and the NAPD did not properly identify the lake. Thomas Long asks how late the Applicant can continue to alter the facts of the application. Deborah White comments that after obtaining a copy of the first notice, the unnamed reservoir was not stated in that notice but was mentioned in the second notice. Ann Jolley comments that the four sponsors of the reservoir project (Wise County Water Control District No. 1, Wise County Commissioner's Court, Wise Soil and Water Conservation District No. 548, and Tarrant Regional Water District) were not included in the mailing list. She states that Wise County Commissioner's Court were the only ones to have any knowledge on this application. Jana Woodruff comments that she and her family were not aware of the plans to build the treatment facility because the notices did not provide an accurate description of the site. She also feels that the terminology used in describing the discharge route was so vague, that owners could not determine if the discharge would occur on their property. Nancy Carnahan and Thomas Long express concern that the application did not include the boundaries of affected property owners that is required on page 11 of the Domestic Administrative Report 1.1. Nancy Carnahan feels that the Applicant failed to submit a landowners map of the properties along the watercourse for a ½ mile radius from the point of discharge into a lake and surrounding landowners where the effluent disposal site is located. Richard Fothergill comments that the members of the Wise County Electric Co-Op were not informed of the proposed project. Catherine Russell comments that she attends the local business meetings and the application was not brought to public attention.

RESPONSE 4:

For new permit and major amendment applications, applicants must provide a landowners list and a map showing their location(s). According to the application instructions, affected landowners are landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge.

The Applicant submitted correspondence dated July 13, 2007, which provided a revision to the landowners list and map that was previously submitted in the application. Based on a review of the information, the Applicant submitted a landowner map that appears to identify landowners surrounding the Applicant's property boundaries and those within one mile downstream of the point of discharge. In this map, the Applicant indicated fifteen tracts of land that were adjacent to the Applicant's property boundary and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. Based on the map, tracts 1-6 are owned by Larry Cole, tract 7 is owned by Shawn White, tract 8 is owned by C.A. Russell, tract 9 is owned by James Forbis, tract 10 is owned by Gordon & Roxie Ploeger, tract 11 is owned by Wesley W. Simmons, tract 12 is owned by Shawn White, tract 13 is owned by J.K. Miller & Gary S. Helton, tract 14 is owned by Cathy Russell Fothergill and tract 15 is owned by James Forbis. The map also appears to map out the property boundaries of these landowners. The TCEQ mails notice of the application to the listed landowners and others on the mailing list for the application, which is maintained by the Office of the Chief Clerk.

If the proposed point of discharge is to a lake, the TCEQ application instructions require the applicant to clearly map out the property boundaries of landowners for a one-half mile radius from the point of discharge. Since the point of discharge for this application is not directly into the reservoir, this particular requirement does not apply. However, the application instructions do require applicants to clearly map out the property boundaries of all landowners surrounding the point of discharge and on both sides of the discharge route for one full stream mile downstream of the point of discharge. Based on a review of the map provided, the Applicant provided this information.

For all applications, the agency prepares two public notices—the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD). The Applicant is required to publish these notices in a local newspaper and to provide a copy of the application, proposed draft permit and Executive Director's Preliminary Decision in a public place for viewing and copying. The NORI and the NAPD are also mailed to the individuals on the landowner list and mailing list for the application.

The NORI is the initial notice that informs the public that a permit application was submitted. It is published early in the process before the Executive Director's staff conducts its technical review of the application. For this application, the NORI was required to be published in accordance with 30 TAC §§ 39.411(1)-(9), (12), and 39.551(b)(1). The Applicant submitted an affidavit of publication that indicated that the NORI was published in the *Wise County*

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Messenger on August 10, 2006. Based on a review of the text of the NORI, it meets applicable requirements. According to the applicable requirements, the text of the NORI for this application must include the following, generally: (1) the name and address of the agency and telephone number of an agency contact from whom interested persons may obtain further information; (2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information; (3) a brief description of the location and nature of the proposed activity; (4) a brief description of public comment procedures; (5) a brief description of procedures by which the public may participate in the final permit decision, generally; (6) the application or permit number; (7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies; (8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying; (9) a description of the procedure by which a person may be placed on the mailing list in order to receive information about the application; and (10) any additional information required by the Executive Director or needed to satisfy public notice requirements of any federally authorized program.

Applicants must publish the NAPD at least once in the same newspaper as the NORI. After the draft permit was written, the Applicant submitted an affidavit of publication indicating that the NAPD was published in the *Wise County Messenger* on October 8, 2006. Based on a review of the text of the NAPD, it has met applicable requirements. The Applicant has complied with TCEQ's regulations by publishing the NORI and the NAPD in the above-mentioned newspapers.

The Applicant indicates in their notices that the address for the place of public viewing is the John A. and Katherine G. Jackson Public Library, located at 1700 South Farm-to-Market Road 51, Decatur, Texas. The Executive Director's staff contacted the library and the address listed in the notices was confirmed. The Applicant is required to provide the name, physical address and the county of the public place where the application is available for viewing and copying. The application states that the information would be available for viewing at the John A. and Katherine G. Jackson Public Library, 1700 South Farm-to-Market Road 51 in Decatur, Texas. The above information was therefore stated in the NORI and the NAPD.

While it is recognized that the applicant did not include the 16 acre lake in the application, the lake was identified by TCEQ staff and fully considered in the development of the draft permit. Therefore, the discharge route identified in the NAPD was based on the review by the Water Quality Standards Team. The Standards Team determined that the treated effluent would be discharged via pipeline to an unnamed tributary, then to the reservoir, then to an unnamed tributary, then to Watson Branch; then to Sandy Branch, then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. This discharge route was provided in the NAPD. Based on information provided by individuals at the public meeting held on April 3, 2007 in Decatur, Texas, the Executive Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site No. 35 (hereinafter "the reservoir"). Based on the information available for this application, it appears that the notice requirements for this application have been met.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted was true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

COMMENT 5:

Nancy Carnahan comments that the permit application states that the discharge will be to a dry river that has no flow present. However, she comments that it is incorrect because the discharge will actually occur into the mouth of their lake. Nancy Carnahan and Cathy Russell Fothergill comment that the Applicant incorrectly classified the discharge route as intermittent with perennial pools and that the discharge route will not reach the Trinity River as represented in the application. Nancy Carnahan comments that the waterway has almost never been dry since the lake was constructed and is several feet deep. She states that page 8 of the Technical Report indicates that the receiving water is a 'stream' and is incorrect, because it is a lake with a surface area of approximately 16 acres. Ann Jolley comments that the unnamed tributary provided in the notice is actually called Watson Branch. Thomas Long comments that the Applicant failed to provide an accurate description of the point of discharge, from an unnamed tributary to the lake on his property, which is within three miles from the outfall. He further comments that the discharge will occur into the largest tributary feeding the lake which is very wide and deep. Catherine Russell comments that the conservation lake appears to be less than one-quarter mile from the proposed facility. Jana Woodruff comments that the effluent will not be discharged into a dry creek bed, but into the backwaters of a contained impounded lake. Deborah White comments that the unnamed tributary following the reservoir to Watson Branch does not exist. Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Ann Jolley, Catherine Russell and Kevin Smith comment that the Applicant failed to reveal pertinent information by providing a map dated 1997 which does not show the conservation lake that was constructed in 1999, therefore indicating a poorly planned project or hiding facts by providing false information.

RESPONSE 5:

While it is recognized that the applicant did not include the 16 acre lake in the application, the lake was identified by TCEQ staff and fully considered in the development of the draft permit. The unnamed tributary provided in the permit application was also assessed in accordance with the Texas Surface Water Quality Standards as water in the state. By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be

modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

At this time, the Executive Director characterizes the discharge route as follows: Treated effluent would be discharged via pipeline to an unnamed tributary, then to the reservoir, then to an unnamed tributary, then to Watson Branch; then to Sandy Branch, then to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin.

COMMENT 6:

Nancy Carnahan comments that page 9 of the Technical Report states that the West Fork of the Trinity River joins the receiving water within three miles downstream of the discharge point. Nancy Carnahan comments that the permit application is incorrect because the water will stay in the conservation lake and become stagnant. She is also concerned that even if the discharge is thoroughly chlorinated it will not provide sufficient time for aeration and dilution of the water before it stagnates in the lake. Althea Forbis comments that the wastewater will stay in the lake because it will become stagnant with no flow. Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, and Catherine Russell comment that the unnamed tributary and the lake are considered one body of water and will become stagnant because the water will flow only when the lake reaches overflow levels. They also feel that only a limited amount of water can escape through the overflow which makes the lake susceptible to contamination. Thomas Long comments that there will be little movement in the water to aid in the dissipation of remaining contaminants and will be detrimental to the quality of water in the lake. Gordon and Roxie Ploeger comment that they are concerned that the discharge is not going to be properly aerated going into Big Sandy Creek Water Shed Lake. Kevin Smith states that the tributary that receives the discharge is the back end portion of the lake and does not flow at all. Martin Woodruff comments that during a time of drought, the lake would be made up of effluent and is concerned about the stagnant conditions that may result in health and nuisance problems. Nancy Carnahan comments that the introduction of effluent will stagnate in the lake and will degrade the water quality of the lake, negatively impacting the surrounding ecosystem. She states that the stagnation will make it difficult for the discharge to achieve the oxygen level of 5 mg/l DO in the lake which is required to maintain the classification as high aquatic life use. She further comments that it does not appear that the discharge would provide enough dilution for the oxygen levels to increase. Nancy Carnahan comments that the Applicant could not have undertaken a Tier 2 investigation of the effect of the discharge on the lake, because doing so would require a thorough study of the quality of water itself and the fish and wildlife. She feels that since the study would require samples from the lake, it would be considered trespassing on private property. Richard and Cathy Russell Fothergill comment that the antidegradation review is both unreliable and invalid. Nancy Carnahan expresses concern that the applicant could not have sampled the lake nor properly evaluated the potential effect the effluent may have on the lake, to be able to provide a fair evaluation of the water quality. Cathy Russell Fothergill, Richard Fothergill, and Thomas Long comment that the Applicant failed to describe the distance from the discharge point to the lake and the tributary. Cathy Russell Fothergill, Richard Fothergill and Thomas Long further comment that the proposed wastewater treatment facility will be located less than 200 yards from the lake. Cathy Russell Fothergill, Richard Fothergill,

and Catherine Russell comment that the Applicant incorrectly classified the tributary as having no significant aquatic life use and the lake as having high aquatic life use. Cathy Russell Fothergill, Richard Fothergill, and Catherine Russell further comment that the tributary and lake are one body of water with significant aquatic life use.

RESPONSE 6:

The effluent limits set out in the draft permit for the protection of dissolved oxygen levels in the reservoir were developed with the aid of a numerical model. Numerical models are routinely used by TCEQ staff because they provide a systematic way for estimating the impact of a discharge on the level of dissolved oxygen in a water body. Generally, dissolved oxygen modeling accounts for the oxygen demand exerted by constituents in the wastewater, demand exerted by the sediments in the reservoir, and oxygen transfer from the atmosphere into reservoir waters. The model was conservatively structured to evaluate the reservoir under conditions when dissolved oxygen is expected to be at its minimum. The analysis was performed for a scenario simulating a discharge during summertime conditions when only effluent from this facility is contributing flow to the reservoir and oxygen demanding constituents and flow are at maximum allowable values. Model results, when considered with the inherently conservative nature of the critical condition formulation, suggest that a dissolved oxygen level consistent with a high aquatic life use should be maintained in the reservoir. Accordingly, the draft permit has incorporated a dissolved oxygen limit consistent with this model.

Discharges from domestic wastewater facilities are fairly uniform in nature and have definite constituents of concern. These constituents most often include bacteria and nutrients. The facility is proposing to disinfect bacteria by chlorination, and phosphorous limits were placed in the draft permit to help protect the lake from nutrient loadings. Information collected from water quality monitoring stations in the watershed were used to assess any potential water quality issues in the area, and none were identified which might be exacerbated by a discharge of this nature. The finding that existing uses would be maintained and protected can be amended with new information provided by the public, additional monitoring data, and/or any further information regarding the facility itself.

From the applicant's description and photos provided in the permit application, the initial point of discharge is into a dry portion of the stream; however, it was noted in the permit review process that the characteristics of the stream change very rapidly shortly after the point of discharge. Lake water begins to back up into the creek as the creek transitions into a lake. In accordance with the Texas Surface Water Quality Standards, any stream which has zero flow for at least one week during most years is an intermittent stream and is assigned an aquatic life use of "no significant," but protection is still afforded to these streams. A minimum dissolved oxygen criterion and acute aquatic life criteria must still be met in an intermittent stream. However, the effluent limits placed in the permit regarding nutrient loading and dissolved oxygen protection were all driven by the fact that the intermittent stream transitions very quickly into a lake. Therefore, the effluent limits are more stringent to protect the water quality in the lake.

COMMENT 7:

Nancy Carnahan comments that she is concerned how the discharge will affect the lake levels. Nancy Carnahan comments that the discharge of 75,000 gallons per day into the lake would essentially affect the water level which would be a violation to the easements granted to Wise County WCID. Thomas Long states that existing easements only allow the Wise County WCID to control the level of water impounded by the lake and dam. He feels that the easements prevent the proposed activities. Martin Woodruff expresses concern that the lake does not have the capacity to handle a discharge of 75,000 per day.

Nancy Carnahan and Thomas Long comment that the application states that the stream was evaluated for 500 feet downstream which could not have occurred because the discharge route is surrounded by private property. Nancy Carnahan further comments that the unnamed tributary and unnamed reservoir are located entirely on her property, therefore, necessary property rights must be obtained by the Applicant. Nancy Carnahan and Thomas Long state that the Applicant made no efforts to obtain nor will they be granted property rights to use for the discharge route. Nancy Carnahan comments that the application should be denied because the discharge will constitute a trespass onto her property and would be considered an unconstitutional taking of private property. Althea Forbis also comments that she is concerned about trespassing on private property. Nancy Carnahan comments that "dumping 75,000 gallons per day on our property is like dumping liquid trash over the fence" and into their private conservation lake. Althea Forbis also asks how a company can pump polluted water into a conservation lake in good conscience. Deborah White questions how a person can be allowed to dump on another person's private property. Althea Forbis asks how the TCEQ could even consider such a proposal when our job is to reduce and prevent pollution which is stipulated in our letterhead.

RESPONSE 7:

It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. The permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations.

TCEQ's jurisdiction is established by the Legislature and is required to address the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ is tasked to issue permits that are consistent with applicable law. Texas Water Code § 26.027 authorizes TCEQ to issue permits for wastewater discharge into water in the state, provided the discharger does not violate applicable rules or regulations.

COMMENT 8:

Nancy Carnahan expresses concern that the Applicant did not provide the coordinates for the exact point of discharge. Nancy Carnahan also comments that the lake would have been easily visible and leads her to believe that the Applicant did not wish to include the lake in the application. Thomas Long also comments that geographic coordinates were not provided for the proposed facility or for the point of discharge.

RESPONSE 8:

TCEQ's application instructions require the Applicant to provide the latitude and longitude of the facility's outfall. The Applicant provided the following coordinates for the outfall: Latitude – 33 degrees, 17 minutes, 08 seconds; Longitude – 97 degrees, 36 minutes, 19 seconds. During the application process, the Water Quality Assessment staff receives the permit application and plots the point of discharge on a county map based on a topographic map provided by the Applicant. While it is recognized that the Applicant did not include the 16 acre lake in the application, the lake was identified by TCEQ staff and fully considered in the development of the draft permit.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

COMMENT 9:

Nancy Carnahan comments that the Applicant states they "believed that from creek bank to creek bank...was public property." She indicates that having researched the matter herself, public property has to be navigable to the ocean.

RESPONSE 9:

The immediate receiving water, as well as the other water bodies in the proposed discharge route are considered by TCEQ to be surface water in the state.¹ TCEQ is authorized to issue permits for discharges into water in the state. The Texas Water Code defines "water in the state," and the definition does not define whether underlying property is considered private property or water in the state.

¹ TEX. WATER CODE ANN. §§ 26.027, 26.001 (Vernon Supp. 1997).

COMMENT 10:

Nancy Carnahan, Althea Forbis, Cathy Russell Fothergill, Richard Fothergill, Rob Fothergill, Thomas Long, Catherine Russell, and Kevin Smith comment that since the Applicant has not operated a wastewater treatment facility before, then they have no previous experience in the construction, operation, and maintenance of a facility. Cathy Russell Fothergill comments that the Applicant has not thoroughly researched the proposal and lacks the proper expertise. Rob Fothergill and Kevin Smith state that they attended a meeting by the Applicant Service and feel that the Applicant does not have experience with inspecting facilities or intention to check the water quality in the lake. Thomas Long comments that by lack of disclosing information in the application, the Applicant has not demonstrated the ability to construct, operate, or maintain a wastewater treatment plant. Deborah White comments that the individuals involved in the project did not fully research the area to truly know what they were going to be doing.

Nancy Carnahan comments that the Applicant's failure to correctly spell "application" and provide the correct address for the place of public viewing, indicates the lack of care taken in the preparation of the application. Cathy Russell Fothergill and Richard Fothergill comment that an Applicant who pays little attention to the detail of work submitted in the application is a poor prospect for the construction and operation of such a project that will cause potential harm to the environment. Rob Fothergill comments that the material in the permit application does not provide accurate information and that the Applicant has not been upfront with anyone in the application. Ann Jolley comments that the application is incomplete, incorrect and outdated. Kevin Smith comments that the application is an indication of a poorly planned project and that a permit granted to the Applicant would be under a false pretense for a facility that would greatly harm the environment. Deborah White comments that the application contains many untruths. Jana Woodruff comments that the information in the application is fraudulent and inaccurate. Nancy Carnahan comments that the proposed facility should require a licensed chief operator on-site 24 hours a day, seven days a week.

RESPONSE 10:

Wastewater treatment facility permittees must employ or contract with at least one licensed wastewater treatment facility operator holding a valid license or registration. TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30. This facility must be operated by a chief operator holding a Category C license or higher. To become licensed by TCEQ as a wastewater treatment plant operator, individuals must have the required education and experience, complete the related training, pay an application or renewal fee, and pass a qualifying exam. In order to become a Category C Operator, individuals must have at least two years of experience—one year of experience may be satisfied by college education, but at least one year of the experience must consist of actual domestic wastewater treatment facility operation or maintenance duties. The operator is not required to be onsite at all times; the facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility. The final design of the facility is not required as part of the wastewater permit application. However, the draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. Other Requirement No. 8 on page 23 of the proposed draft permit requires the Applicant to clearly show how the treatment system will meet the final permitted effluent limitations required for each phase of the proposed draft permit. The proposed draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria according to 30 TAC Section 317.1, prior to construction of each phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer.

If requested by the Wastewater Permitting Section, the permittee must also submit plans, specifications, and a final engineering design report that comply with applicable rules. The Executive Director, in determining whether to perform a review, uses factors such as whether a nonconforming or innovative technology is being proposed, the stream segment in which the project is located, and the Applicant's compliance record. In addition, a licensed professional engineer must certify that the wastewater treatment facility was constructed according to the plans and specifications.

The Applicant is also required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the draft permit states that the Applicant must at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Under the draft permit, the Applicant would be responsible for installing adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

The Applicant indicates in their notices that the address for the place of public viewing is the John A. and Katherine G. Jackson Public Library, located at 1700 South Farm-to-Market Road 51, Decatur, Texas. The Executive Director's staff contacted the library and the address listed in the notices was confirmed. The Applicant is required to provide the name, physical address and the county of the public place where the application is available for viewing and copying. The above information was therefore stated in the first and second notice.

By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

Acceptance of the permit by the entity to whom it is issued constitutes acknowledgment and agreement that the permittee will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission. The permittee has a duty to comply

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with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code and is grounds for enforcement action.

COMMENT 11:

Nancy Carnahan comments that if the lake level is reached and the overflow valve is triggered, the proposed discharge will flow downstream and "will thwart the erosion and flood control purpose of the lake." Nancy Carnahan also comments that TCEQ should determine what effect the discharge may have on the erosion and flood control purposes in place. Nancy Carnahan and Jana Woodruff comment that the intention of the lake project was to control soil erosion and flooding in the area. Althea Forbis, Cathy Russell Fothergill, Rob Fothergill, Ann Jolley, Kevin Smith, Catherine Russell, Deborah White and Joylyn Woodruff comment that the reservoir was designed to prevent erosion. Cathy Russell Fothergill and Richard Fothergill comment that the proposed facility will contribute to increased erosion.

Ann Jolley comments that if this permit is issued, flooding will occur when the flood level in the lake is reached and spills over. Ann Jolley comments that flooding of over 44 plus acres will occur. Ann Jolley also comments that it will occur onto others' private property rather than on the Applicant's land. Ann Jolley comments that she is concerned that the flooded water would not be aerated and be unsafe for the water table, recreation use, wildlife and aquatic life use. Thomas Long comments that the lake was built to impound flood water and discharge of thousands of gallons of effluent on a daily basis is not in the public's best interest. Deborah White comments that once the lake is at its capacity, any addition will cause the back up and they could be looking at a 45 acre flood. She also feels that as the creek rises, it will affect surrounding owner's property. Jana Woodruff comments that the proposed facility will increase the water level of the lake from 16 acres to 26 acres before the overflow would be affected and sent downstream. She further states that it will cover more of their land and endanger much of the wildlife.

RESPONSE 11:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. TCEQ does not address flooding or erosion issues associated with a discharge in the wastewater permitting process. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. For flooding concerns, please contact the local floodplain administrator for your area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

Based on information obtained during the public meeting held on April 13, 2007 in Decatur, Texas, there is an overflow valve that allows the water to flow out of the reservoir when it reaches a certain level. In this case, it would seem to be unlikely that the level would rise above the set level.

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The issuance of the permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Also, the issuance of the permit would not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. Before commencing any activity authorized in the draft permit, the Applicant would have to acquire property rights necessary to use the discharge route. Accordingly, the draft permit does not authorize the Applicant to build a facility on another's land or discharge onto another's property without permission.

The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create a nuisance condition, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 4 Office in Dallas at (817) 588-5800, or by calling the state-wide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.

Please refer to responses 1 and 6 for issues related to aeration, the water table, recreational use, and aquatic life use.

COMMENT 12:

Nancy Carnahan comments that property owners who called the Applicant's office to inquire and protest the permit were addressed by the Applicant's representatives and told that the facility was a "done deal." Rob Fothergill and Kevin Smith comment that they are concerned that the developers may already be misusing roads and cutting locks on gates to access the land before they have received the proper permits. Ann Jolley feels that they may not be able to protest the wastewater treatment plant once the permit has been issued. Catherine Russell, Kevin Smith, and Deborah White comment that at a meeting with the Applicant, the audience asked what the facility would smell like and it was stated, "it smells like money to me."

RESPONSE 12:

The Applicant has not been issued the draft permit at this time. This Response, along with the Executive Director's Preliminary Decision on the application, is mailed to persons who submitted public comments or who requested to be on the mailing list for the application. The letter transmitting this Response specifies the deadline by which affected persons may request a contested case hearing or request reconsideration, which provides additional opportunities for public participation in the permitting process.

The issuance of the permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Also, the issuance of the permit would not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. Before commencing any activity authorized in the draft permit, the

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Applicant would have to acquire property rights necessary to use the discharge route. Accordingly, the draft permit does not authorize the Applicant to build a facility on another's land or discharge onto another's property without permission.

COMMENT 13:

Althea Forbis expresses concern that the facility will be very noisy and disrupt the peace and tranquility of the neighborhood. Cathy Russell Fothergill and Richard Fothergill comment that the proposed development site will guarantee that established homes in the area will be smothered in dust and noise pollution. Cathy Russell Fothergill and Richard Fothergill also comment that they are concerned that the plant will create an intolerable odor and limit their use of outdoor activities. Richard Fothergill also comments that he has "yet to see a sewage treatment plant that did not emit an intolerable odor." Rob Fothergill and Kevin Smith comment that they are concerned that the air quality for their families and neighbors will be polluted and unbearable. Catherine Russell comments that the Applicant has shown little concern for the prevention of nuisance and odor. Deborah White comments that the facility will emit smells. Cathy Russell Fothergill comments that if odor will not be present, then why is the wind speed and direction provided in the permit application.

RESPONSE 13:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors according to 30 TAC § 309.13(e). These rules provide three options for applicants to use to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control. The proposed facility meets the buffer zone requirements by ownership of a 150-foot distance from the proposed wastewater treatment facility to the Applicant's property line.

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. TCEQ must consider the quality of the discharge and its effect on the quality of the receiving waters, but the Executive Director does not consider development issues if they do not conflict with applicable rules and regulations related to the wastewater permitting process.

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The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create a nuisance condition, TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to TCEQ Region 4 Office in Dallas at (817) 588-5800, or by calling the state-wide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.

COMMENT 14:

Cathy Russell Fothergill comments that water wells that provide drinking water for humans and farm animals, are located on the northeast corner of her property and are a few feet from the proposed wastewater treatment facility site. Cathy Russell Fothergill further comments that her son has a water well that is located within the half-mile radius noted in the TCEQ guidelines. Cathy Russell Fothergill comments that the Applicant failed to locate and identify water wells within a half-mile from the plant site. Rob Fothergill comments that his family and neighbors have water wells located within one-quarter mile or closer to the proposed facility site. Ann Jolley comments that surrounding private water wells and the water quality may be endangered in this area. Kevin Smith comments that he is concerned about poisoning of ground water in the area surrounding the plant. Deborah White comments that she and several other landowners have water wells located close to, if not within the half-mile mile radius that is required. Joylyn Woodruff comments that they depend on wells for their drinking water in the area.

RESPONSE 14:

TCEQ rules require that a wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. These separation distances apply to any facility used for the storage, processing, or disposal of domestic wastewater. The applicant must indicate if they have addressed the unsuitable site characteristics required in the TCEQ rules, which provides the buffers to private and public wells. Based on information from the Applicant, these requirements are met.

COMMENT 15:

Cathy Russell Fothergill comments that the written notices mailed to her from TCEQ provided the company name as Wise Service Company - Water. Cathy Russell Fothergill also comments that the application available for viewing at the Decatur Public Library provided the name of Brighton Water Systems.

RESPONSE 15:

The Applicant did submit a permit application on July 22, 2005, under the name of Brighton Water Systems. However, a letter dated June 19, 2006 from the Applicant stated the correct legal name on file with the Texas Secretary of States to be Wise Service Company – Water. Therefore, the change was noted and applied in the processing of the permit.

COMMENT 16:

Cathy Russell Fothergill and Richard Fothergill comment that the Applicant does not own the land where the proposed facility is to be located as shown on the maps provided. Ann Jolley also comments that the Applicant does not own the 266 acres of land indicated on the maps that were provided. Thomas Long comments that the documents filed with the library for public viewing did not list the owners of the property for the location of the facility. Catherine Russell comments that the Applicant does not hold the legal title for the land claimed to be used.

RESPONSE 16:

Additional information was received in a revised permit application dated June 19, 2006, where the Applicant indicates that since the original filing of the application, secured ownership of the property had been obtained. The issuance of the permit would not grant the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. Also, the issuance of the permit would not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. Before commencing any activity authorized in the draft permit, the Applicant would have to acquire property rights to use the discharge route. Accordingly, the draft permit does not authorize the Applicant to build a facility on another's land. The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property.

COMMENT 17:

Cathy Russell Fothergill comments that the water from the reservoir ultimately supplies water to Fort Worth.

RESPONSE 17:

Based on a review by the TCEQ Water Quality Standards Team, the reservoir is not designated as a drinking water supply. However, Segment No. 0810 is classified as a public water supply, which is located more than five miles downstream from the point of discharge. Given the size of the discharge, the distance it has to travel, and the dilution it will receive along the way it is unlikely that this discharge could negatively impact Segment 0810.

COMMENT 18:

Richard Fothergill comments that a complete visual inspection of the area should be made by representatives of the TCEQ.

RESPONSE 18:

TCEQ staff that participated in the public meeting visited the site, including the reservoir. However, due to the conditions of the land, an inspection of the entire site could not be conducted at that time. "Other Requirement No. 3" in the draft permit would require the Applicant to provide written notice to the TCEQ Region 4 Office and Applications Review and Processing Team at least 45 days prior to plant startup or anticipated discharge, which provides an additional opportunity for TCEQ staff to conduct a site visit. Additionally, the TCEQ regional office conducts periodic inspections of wastewater facilities and conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area or by e-mail at cmplaint@TCEQ.state.tx.us. Noncompliance with TCEQ rules or the permit may result in the Applicant receiving a notice of violation. For more information regarding enforcement, please see TCEQ's web site at www.tceq.state.tx.us/ and click on "Compliance, Enforcement and Cleanups."

COMMENT 19:

Nancy Carnahan comments that an alternative discharge route on the developer's own property should be investigated. Cathy Russell Fothergill and Richard Fothergill as well as Catherine Russell comment that the proposed housing development of 200 houses or more will strain the water table and possibly cause a water shortage for personal consumption and agricultural use. Ann Jolley comments that the new development will have an impact on the water table which has been stressed due to several years of drought. Deborah White comments that with the addition of 270 homes then they might not have to worry about being flooded, because there may not be any water to do so. Cathy Russell Fothergill and Richard Fothergill express concern that the removal of trees and dirt for construction will create silt to destroy the tributary and lake. Richard Fothergill further states that the development would interrupt the movement of game animals and affect hunting and fishing activities. Cathy Russell Fothergill and Richard Fothergill comment that the Farm-to-Market Road provides bare adequacy for the existing traffic, but will certainly be inadequate to handle additional households that are projected in the development. Rob Fothergill expressed that they have not been treated fairly by Wise Electric because of the lack of information and proper notice that they deserve as members. Rob Fothergill and Catherine Russell comment that they participated in government funded cost share programs to enhance the value and quality of the land. He also comments that the facility would reduce the quality of life and reduce the property value of his land. Kevin Smith comments that the primary purpose of the government funded program was to improve the habitat for wildlife and the facility will reduce the property value of his land as well.

RESPONSE 19:

TCEQ's jurisdiction is established by the legislature and is limited to the issues set forth in Chapter 26 of the Texas Water Code. TCEQ must consider the quality of the discharge and its effect on the receiving waters, but the Executive Director does not consider concerns related to increased traffic resulting from facility or development operations if they do not otherwise conflict with applicable rules and regulations related to the wastewater permitting process. Further, the Executive Director cannot address concerns related to the practices of an electric co-op if such practices do not otherwise negatively affect the environment in violation of applicable rules and regulations that TCEQ is tasked to implement. Additionally, TCEQ cannot consider development issues, property values, or require an applicant to pursue a different discharge route.

The developer/owner/whoever it is in this case is also subject to TCEQ storm water permitting during construction activities. The developer is required to develop and implement a storm water pollution prevention plan (SWP3) and submit a notice of intent to TCEQ for coverage under TXG150000, TCEQ's construction general permit prior to beginning any earth disturbing activities at the site. The SWP3 sets forth the best management practices, e.g. silt fences, etc. that will be utilized to minimize runoff of total suspended solids from construction activities. Runoff controls must remain in place until construction activities cease and the site is stabilized. For more information on TCEQ's permitting program for construction activities, please visit TCEQ's web site at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html.

COMMENT 20:

Thomas Long comments that the Applicant failed to indicate that the discharge would occur to a flood control drainage ditch as required in the application. He further states that the effluent "will clearly discharge into a flood control lake."

RESPONSE 20:

The application does require the applicant to identify where the effluent is discharged to a city, county, state highway right-of way, or flood control district drainage ditch. According to the information available for the tributary, it appears to be a naturally flowing tributary. It does not appear to have been constructed for the sole purpose of conveying flood water. Accordingly, that part of the discharge does not appear to require special authorization for a discharge. The TCEQ application does not require the Applicant to get authorization to discharge to a flood control lake.

COMMENT 21:

Deborah White comments, "In doing modeling, did you use the pipe that was in the lake to show the water flow from the lake? And then adding, and doing an assumption of 250 more households dumping water into this lake, would that drain in this lake be able to handle all of that water coming in from there?"

RESPONSE 21:

No evaluation of the adequacy of this drain was performed by Commission staff as a part of the review of this application. As a practical matter, it is likely that this drain has been sized to accommodate large flows that would be the result of a heavy rainfall event in the watershed. These flows would likely be much larger than the proposed permitted flow for this facility. The reason the riser is designed this way is so that under all but extreme conditions, the emergency spillway for these structures is not used. This prevents the structural integrity of the dam from possibly being compromised.

COMMENT 22:

Joylyn Woodruff comments that she feels that septic systems provide more control and less pollution than the proposed facility. She feels that because the planned lots will be smaller than the original lots, a community water and sewerage system is now required rather than individual systems. Kevin Smith comments that the original plat could have been serviced by independent septic systems, however, the second plat now requires the sewer plant to service approximately 200 homes.

RESPONSE 22:

The Executive Director considers the application submitted by the Applicant. The Executive Director cannot dictate lot size and require the use of septic tanks instead of a centralized sewer collection system. The draft permit requires the proposed facility to be designed to produce an effluent quality in compliance with the permit parameters required in the draft permit. The effluent limits in the draft permit, based on a 30-day average, are 5 milligrams per liter (mg/L) 5-day carbonaceous biochemical oxygen demand, 5 mg/L total suspended solids, 2 mg/L ammonia-nitrogen, 1 mg/l total phosphorus and 4.0 mg/L minimum dissolved oxygen. By meeting the required effluent limitations in the permit, the proposed facility will be capable of treating effluent that is considered enhanced secondary treatment with nutrient removal. That level of treatment cannot be achieved through septic systems.

COMMENT 23:

Martin Woodruff asks if a meter will be used to measure the amount of effluent at the point of discharge. Martin Woodruff also asks if that information would be available to the public.

RESPONSE 23:

The draft permit requires the effluent monitoring samples to be taken following the final treatment unit based on TCEQ rules. The Applicant is required to submit a flow diagram to identify the final treatment unit prior to discharge. For this facility, the sampling point would be at the location following the chlorine contact chamber and prior to discharge.

The Applicant is required to monitor the volume of treated effluent discharged. The Applicant is also required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. The Applicant is required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. Additionally, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

Information such as the discharge monitoring reports (DMRs) submitted to TCEQ are considered public information and can be requested. For more information on obtaining public information, you may call TCEQ at (512) 239-1000. Additional information is available online at the following address:

<http://www.tceq.state.tx.us/admin/data/reqinfo.html#pubinfoact>.

The DMRs for wastewater treatment facilities can also be obtained on the Environmental Protection Agency's web site at <http://www.epa.gov/>, click on the link for "Information Sources" and then "Databases and Software". Envirofacts is the name of the national information system that provides a single point of access to data extracted from seven major EPA databases.

COMMENT 24:

Martin Woodruff asks what procedure the Applicant would have to meet in order to expand the facility in the future.

RESPONSE 24:

In order to expand the wastewater treatment facility, the Applicant would have to submit a major amendment application to the permit. The major amendment would have to provide justification for the need of the expanded facility and would require a full review of the operation of the wastewater treatment facility. An application for a major amendment is also subject to applicable public notice rules, similar to this application.

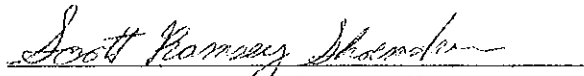
- **No changes to the draft permit have been made in response to public comment.**

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division



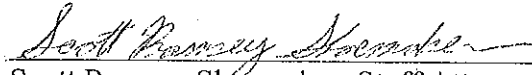
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2008, the original of the "Executive Director's Response to Comments" on Wise Service Company-Water's application for TPDES Permit No. WQ0014708001 was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.



Scott Ramsey Shoemaker, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

CHIEF CLERKS OFFICE

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